

§ 536.203

actually moves the employee to the lower-graded position.

[70 FR 31305, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008]

§ 536.203 Additional eligibility requirements for grade retention.

(a) An employee is eligible for grade retention under § 536.201(a)(1) only if the employee has served for at least 52 consecutive weeks in one or more positions under a covered pay system at one or more grades higher than the grade of the position in which the employee is being placed. Such service is deemed to include service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard (as defined in 5 U.S.C. 2105(c)) who is moved to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

(b) An employee is eligible for grade retention under § 536.201(a)(2) based on a reclassification of his or her position only if, immediately before the reduction in grade, that position was classified at the existing grade or a higher grade for a continuous period of at least 1 year.

(c) An employee is eligible for grade retention under § 536.202 only if, immediately before being placed in the lower grade, the employee has served for at least 52 consecutive weeks in one or more positions under a covered pay system at one or more grades higher than that lower grade. Such service is deemed to include service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard (as defined in 5 U.S.C. 2105(c)) who is moved to a position in the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

(d) Eligibility for grade retention under § 536.201 or 536.202 ceases under the conditions specified in § 536.207.

§ 536.204 Period of grade retention.

(a) Unless grade retention is terminated under § 536.208, an employee is entitled to retain the grade held imme-

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diately before the action that provides entitlement to grade retention for 2 years beginning on the date the employee is placed in the lower-graded position.

(b) During the 2-year period of grade retention, if an agency further reduces an employee in grade under circumstances also entitling the employee to grade retention, the employee must continue to retain the previous retained grade for the remainder of the first 2-year period. At the end of the first 2-year period, the employee is entitled to retain the grade of the position from which the second reduction in grade was made for 2 years following the effective date of the second reduction in grade.

(c) Notwithstanding § 536.207(a)(1), grade retention continues to apply to an employee serving under an interim appointment made under 5 CFR 772.102 for the duration of the original 2-year grade retention period if the employee's grade was retained under this part in the appointment immediately preceding the interim appointment.

§ 536.205 Applicability of retained grade.

(a) Except as provided in paragraph (b) of this section, an agency must treat an employee's retained grade as the employee's grade for all purposes, including pay and pay administration, premium pay, retirement, life insurance, and eligibility for training. If the employee's actual position of record is under a different covered pay system than the covered pay system associated with the retained grade, the agency also must treat the employee as being under the covered pay system associated with the retained grade for the same purposes.

(b) An agency may not use an employee's retained grade—

(1) In any reduction in force procedure;

(2) To determine whether an employee has been reduced in grade for the purpose of terminating grade or pay retention (*i.e.*, based on personal cause or at the employee's request);

(3) To determine whether an employee retains status as a GM employee (as defined in 5 CFR 531.203); or

(4) To determine whether an employee is exempt or nonexempt from the Fair Labor Standards Act of 1938, as amended.

§ 536.206 Determining an employee's rate of basic pay under grade retention.

(a) *General.* (1) When an employee becomes entitled to grade retention or becomes covered by one or more different pay schedules (because of a change in the employee's position of record, a change in the employee's official worksite, or the establishment of a new pay schedule) during a period of grade retention, the agency must apply the rules in this section to determine the employee's rate of basic pay.

(2) This section does not apply to an employee whose entitlement to grade retention is terminated under one of the conditions in § 536.208. (See § 536.208(d).)

(b) *Preexisting rate within a range.* If an employee is entitled to a rate of basic pay within the applicable rate range before the action resulting in application of this section, the employee is entitled to the rate(s) of basic pay in the applicable pay schedule(s) for the employee's position of record after the action (including the retained grade) which correspond to the employee's grade and step (or relative position in range for a GM employee) immediately before the action. The employee's payable rate is the corresponding rate in the highest applicable rate range for the employee's position of record after the action (including the retained grade). If an employee's rate of basic pay otherwise would be reduced because of placement under a lower-paying pay schedule (excluding any reduction that results from a geographic conversion), the employee would be eligible for pay retention under subpart C of this part to the same extent as other employees holding the same position of record whose actual grade is the same as the employee's retained grade.

(c) *Preexisting retained or saved rate.*

(1) If an employee is entitled to a retained rate immediately before the action resulting in application of this section, the agency must determine the employee's payable rate of basic pay under §§ 536.303 and 536.304.

(2) If an employee is entitled to a saved rate under 5 CFR 359.705, the agency must determine the employee's payable rate of basic pay under that section.

(d) *Order of processing pay actions.* When an action resulting in application of this section takes effect on the same effective date as other pay actions that affect an employee's rate of basic pay (e.g., within-grade increase), the actions will be processed in the order prescribed in the rules governing the covered pay system of the employee's position of record (e.g., 5 CFR 531.206 for GS positions and 5 CFR 532.413 for Federal Wage System positions).

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§ 536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of an entitlement under § 536.201 ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in service of 1 workday or more;

(2) The employee is reduced in grade for personal cause or at the employee's request (based on the actual grade of the employee's position rather than the employee's retained grade and, when a movement to a different covered pay system is involved, a comparison of comparison rates under § 536.105);

(3) The employee moves to a position under a covered pay system with a grade that is equal to or higher than the retained grade (as determined under § 536.105), excluding a temporary promotion;

(4) The employee declines a reasonable offer of a position with a grade equal to or higher than the retained grade (as determined under §§ 536.104 and 536.105);

(5) The employee elects in writing to terminate the benefits of grade retention; or

(6) The employee moves to a position not under a covered pay system.

(b) Eligibility for grade retention as a result of entitlement under § 536.202